

NEWMAN FERRARA LLP

1250 Broadway, 27th Fl., New York, NY 10001
tel. 212-619-5400 • fax 212-619-3090
www.nfllp.com

February 17, 2023

[Sent via: ECF]

The Honorable Andrew E. Krause
Southern District of New York
300 Quarropas Street
White Plains, New York 10601-4150

Re: *Maldonado v. Town of Greenburgh*, et al.
18-cv-11077 (KMK)(AEK)

Your Honor:

The undersigned represents Plaintiff in the above-referenced matter and submits this joint letter on behalf of all parties pursuant to the Court's order of February 2, 2023. On that date, the Court granted in part Plaintiff's motion for an extension of time to complete discovery in order to allow time to secure the deposition and outstanding medical records of Dr. James Sayegh and any supplemental expert reports flowing therefrom. [Dkt. No. 199].

The Court authorized a subpoena submitted by Plaintiff on February 2, 2023, commanding Dr. Sayegh to produce his entire medical file for Jonathan Maldonado and appear for an in-person deposition at the Federal Courthouse in White Plains on February 13, 2023 at 10:00 a.m.. The subpoena was served at Dr. Sayegh's office on February 6, 2023. A copy of the subpoena, an updated HIPAA release form, and the Court's Order of February 2, 2023 [Dkt. No. 200] were sent via overnight mail to Dr. Sayegh's office and delivery was confirmed on February 7, 2023 at 10:30 a.m. On Friday, February 10, 2023, Plaintiff's counsel called Dr. Sayegh's office and were advised he did not have office hours on Fridays. I then sent an email to Dr. Sayegh (copying all counsel) confirming the details for the deposition scheduled for February 13, providing my cell phone number and offering to personally pick up any medical records in advance of the deposition. Dr. Sayegh did not respond, did not produce any medical records, and did not appear for his deposition on February 13. At 10:05 a.m. I called Dr. Sayegh's office, with all counsel present, and was advised that he was in the office. Dr. Sayegh came on the line, and after some discussion it was agreed that we would conduct the deposition the next day, February 14, 2023, at his office at 3:00 p.m.. I received a call the morning of February 14 from John Barbera, Esq., of the firm Martin, Clearwater & Bell LLP, advising that he had been retained to represent Dr. Sayegh in regard to his non-party subpoena, but was unable to go forward with the deposition that afternoon. After numerous communications, Dr. Sayegh's in person deposition is now scheduled for February 24, 2023 at 9:00 a.m. at Mr. Barbera's office in White Plains. As of now, no additional medical records have been produced.

It is our hope that now that Dr. Sayegh is represented by counsel, his full compliance with the judicially authorized subpoena will be realized. If not, Plaintiff anticipates filing a motion for appropriate contempt sanctions with the Court. Based on the assumption that Dr. Sayegh will appear for his deposition on February 24, and produce the electronic medical records and paper records in storage he previously testified to having, the parties propose the following revised discovery schedule:

- Deposition of Dr. James Sayegh and the production of medical records to be completed by February 27, 2023;
- Plaintiff to exchange supplemental report of expert Michael Baden, M.D. by March 24, 2023;
- Further limited deposition of Michael Baden, M.D. (if supplemental report is served) by April 24, 2023;
- Defendants to serve supplemental reports, if any, of Defendants' experts, Kenneth Katz, M.D. and/or Carl Williams, M.D., by May 24, 2023;
- Parties to provide a status report to the Court by June 7, 2023, to advise whether supplemental expert reports were exchanged; and
- Further limited depositions of Kenneth Katz, M.D. and/or Carl Williams, M.D. (if supplemental reports are served) by June 23, 2023;

Very truly yours,

NEWMAN FERRARA LLP

s/ Debra Cohen

Debra Cohen

The above schedule is hereby adopted as an order of the Court.

Dated: February 21, 2023

SO ORDERED.



ANDREW E. KRAUSE
United States Magistrate Judge